

LEASE RIDER

This Lease RIDER (“Rider”), made as of _____, by and between _____ (“Lessor”), _____ (“Tenant”), and United States Department of Health and Human Services, Administration for Children and Families (“HHS/ACF”) attaches to lease between Lessor and Grantee entered into on _____, for the real property located at _____ (“Lease”). HHS/ACF is not a party to the attached Lease, but joins in execution of this document solely to evidence its consent to the provisions hereof.

WITNESSETH:

WHEREAS, Lessor is the owner of real property located at _____ and described in Exhibit A attached hereto and hereby incorporated into this Rider (the “Property”);

WHEREAS, On _____, the United States Department of Health and Human Services, Administration for Children and Families (“HHS/ACF”) awarded Grant No. _____ in the amount of _____ to Tenant for the purpose of operating a Head Start facility in _____;

WHEREAS, Tenant has agreed to lease a portion of the above-described Property (“Leased Premises”) from Lessor for the purpose of operating a Head Start facility, pursuant to a lease, a copy of which is attached hereto as Exhibit B (the “Lease”), which establishes a leasehold interest (the “Leasehold”) for the benefit of the Tenant;

WHEREAS, HHS/ACF has approved Tenant’s planned use of its award of Head Start grant funds to construct a facility on leased property or complete a major renovation of the Leased Premises (the “Improvements”), and;

WHEREAS, HHS/ACF has and will continue to have a Federal Interest (defined below) in the Leasehold because the Tenant has used Federal grant funds awarded by HHS/ACF to make Improvements to the Leased Premises. The Federal Interest includes any future HHS/ACF awards made for Improvements to the Leasehold.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows:

1. *Definitions:*

Under this Rider, the following terms are defined as follows:

(a) *Event of Default:*

The term “Event of Default” means an event of default under the Lease.

(b) *Federal Interest:*

The term “Federal Interest,” in the context of the Lease, is the interest of HHS/ACF in the Leasehold that secures the remaining value of the Improvements, as determined in accordance with Section 2(c).

(c) *Lessor:*

The term “Lessor” means
and/or its heirs, assignees, and successors under this Rider and the Lease.

(d) *Parties:*

The term “Parties” shall refer to Lessor, Tenant, and their respective heirs, successors, and assignees under this Rider and the Lease.

(e) *Tenant:*

The term “Tenant” means
and/or its heirs, assignees, and successors under this Rider and the Lease.

2. *Federal Interest.*

- (a) This Lease Rider evidences a Federal Interest in the Leasehold that secures the right of the federal awarding agency to recover the remaining value of the Improvements in the event that a lease is terminated prior to expiration of its full term.
- (b) The Federal Interest in the Leasehold of a facility on which the Tenant has made major renovations with Federal Head Start funds continues for a period of at least 15 years and the Federal Interest in the Leasehold of land on which the Tenant has constructed a facility with Federal Head Start funds continues for a period of at least 30 years notwithstanding any termination of the lease prior to completion of its original term.
- (c) In the event of termination prior to completion of the original term of the Lease, the value of the Improvements will be determined by applying the remaining term of the Lease expressed as a percentage of the entire term and applying the resulting percentage to the amount of Federal Head Start funds awarded to the Grantee/Recipient for the Improvements. Such remaining value of the Improvements at the time of termination is subject to disallowance at the discretion of the awarding agency.

3. *Tenant’s Obligations.*

- (a) The Tenant agrees not to sublease, assign, or otherwise transfer the Leased Premises, or use the Leased Premises for any non-grant purpose, without the express written approval of the responsible HHS/ACF official.
- (b) The Tenant agrees to provide HHS/ACF with notice:
 - (1) Of any Event of Default by the Tenant, on the date of the discovery of such Event of Default; and/or
 - (2) That the Lessor has notified the Tenant of its intent to exercise the remedy of cancellation, termination, and/or other remedies, on the day that the Tenant receives such notice from the Lessor.

4. *Lessor's Promise To Notify HHS/ACF.*

The Lessor agrees to provide HHS/ACF with notice:

- (a) Of any Event of Default by the Tenant, as soon as the Lessor first knows of such default;
- (b) That the Lessor intends to exercise its remedy of cancellation, termination, and/or any other remedy, on the day that Lessor notifies the Tenant that it intends to exercise such remedy or remedies;
- (c) That the Lessor intends to mortgage the Leased Premises; and/or
- (d) Of any lien or other encumbrance affecting title that has been attached to the Leased Premises, as soon as practicable after Lessor first knows of any such lien or other encumbrance affecting title.

5. *Addresses For Notification To HHS/ACF.*

Whenever notice to HHS/ACF is required under this Rider, the Lessor and the Tenant promise to provide both telephonic and written notification (by registered mail, return receipt requested) to the following HHS/ACF offices, or to their successors:

- (a)
 - Office of Grants Management
 - Administration for Children and Families
 - U.S. Department of Health and Human Services

Telephone Number:

Email:

(b)

Director, Office of Head Start
Administration for Children and Families
330 C St., S.W.
Washington D.C. 20201
Telephone Number:
Email:

(c) Office of the General Counsel, Children, Families, and Aging Division
United States Department of Health and Human Services
330 Independence Avenue, S.W., Rm. 4276
Washington, DC 20201
Telephone Number: (202) 690-8005

In addition, if the offices listed above have a change of name, address, and/or telephone number, the Lessor and the Tenant further agree to take all reasonable action necessary to discover and notify the appropriate government offices listed in this section.

6. *Contents of Notification to HHS/ACF.*

The Lessor and the Tenant agree to include the following information in the written notice to HHS/ACF whenever such notice is required under this Rider:

- (a) The full names, addresses, and telephone numbers of the Lessor and the Tenant and the address of the Leased Premises;
- (b) The following statement, prominently displayed at the top of the first page of the notice:

The Federal Interest in certain real property or equipment purchased or improved by the Office of Head Start may be at risk. Immediately give this notice to the appropriate government official.

- (c) The date and the nature of the default and the manner in which the default may be cured and/or an explanation of other circumstances that required the notice;
- (d) In the event that the Lessor will be exercising the remedy of cancellation, termination, and/or other remedies, the date or expected date of the cancellation and/or exercise of any remedy or remedies.
- (e) Of any notice of foreclosure or other action to enforce a remedy against the Leased Premises by a third party on the day that Lessor receives notice of such foreclosure or other action.

7. *Tenant's Promise to Notify Lessor of Changes in HHS/ACF's Address.*

The Tenant agrees to give the Lessor written and telephonic notice of any change of name, address, and/or telephone number of an HHS/ACF office listed in Section 5. If one or more of the HHS/ACF offices listed in Section 5 stops operating, the Tenant agrees to give the Lessor written and telephonic notice of the name, address, and telephone number of the succeeding Federal office(s) to which notice must be given.

8. *HHS/ACF's Rights in Event of The Tenant's Default.*

If an Event of Default occurs, the Parties agree that HHS/ACF may intervene to ensure that the default is cured by the Tenant, HHS/ACF, or another entity designated by HHS/ACF and that the Lessor shall accept the payment of money or performance of any other obligation by HHS/ACF or its designee, for the Tenant, as if such payment of money or performance had been made by the Tenant. Unless otherwise specified in Section 8, HHS/ACF shall have sixty (60) days from the date of receipt of notice of the default that has been served in full compliance with Sections 3 through 6 above in which to intervene and to attempt to cure the default. If HHS/ACF fails to respond to any notice of default from Lessor, HHS/ACF's Federal Interest and the Tenant's obligation to repay the remaining value of the Improvements are preserved pursuant to 45 C.F.R. § 1303.49(a)(4).

9. *Special Period for Curing Certain Non-Monetary Defaults.*

With respect to non-monetary defaults that cannot with due diligence be cured within sixty (60) days from the date of receipt of notice of default that has been served in full compliance with Sections 3 through 6 above, if Tenant, HHS/ACF, or another entity designated by HHS/ACF promptly commences to cure the default within the sixty (60) day period and thereafter continues to attempt to cure the it with due diligence, then the party attempting to cure the default shall have the right to such additional time as may be reasonably necessary to finish curing the default.

10. *Delay of Exercise of Remedies Pending Cure.*

In the event of a default under the Lease, Lessor agrees that it shall not commence cancellation or termination of the Lease or any other remedies that affect ownership or possession of the Leased Premises until after (i) HHS/ACF has been properly served, in full compliance with Sections 8 through 9, with notice of default and intent to exercise remedies, and (ii) one of the following events has occurred:

- (a) The responsible HHS/ACF official informs the Lessor in writing that HHS/ACF has decided not to cure the default; or

- (b) HHS/ACF fails to timely cure the default within the period of time set forth in Sections 7 or 8.

11. *HHS/ACF's Right to Substitute Another Entity Under the Lease.*

Notwithstanding any other provision of this Rider or the Lease, the Parties recognize and hereby consent that, in an Event of Default, or the withdrawal or termination of the Tenant from the Federal grant, the Lease may be assumed by an entity designated by HHS/ACF. The Lessor will have the right to approve the entity HHS/ACF designates to assume the Lease, but such approval will not be withheld except for good cause and will not be unreasonably delayed. Any interim or replacement grantee must, as a precondition to its occupancy of the Leased Premises, execute an Assumption Agreement approved by Lessor and HHS/ACF.

12. *Tenant Shall Cooperate With Substitution.*

The Tenant covenants and agrees that, in the event HHS/ACF designates another entity, either on an interim or permanent basis, to assume the Tenant's rights, obligations, and liabilities under the grant and the Lease, the Tenant will relinquish to such designee possession and all property interests that the Tenant might have in the Leased Premises, subject to any compensation to which the Tenant may be entitled.

13. *Substitution by HHS/ACF Shall Not Constitute an Event of Default.*

Notwithstanding any other provisions of this Rider or the Lease, the Parties agree that any substitution of grantees by HHS/ACF, either on an interim or permanent basis, shall not constitute a default under this Rider or an Event of Default. The Parties further agree that any such substitution by HHS/ACF that is made in accordance with this Rider shall not trigger termination of the Lease or any other remedy under this Rider or the Lease.

14. *Notice of Federal Interest in the Leasehold.*

This Rider also serves to notify all potential sellers, purchasers, transferors, transferees, mortgagees, creditors, and any other persons or entities who have or may seek to obtain an interest of any kind in the Property of the Federal Interest in the Leasehold.

In accordance with the terms of the Federal grant, the Head Start Act, 42 U.S.C. §§ 9831-9852c, 45 C.F.R. Parts 75 and 1303, and relevant decisions of the United States courts, the restrictions on the use of the Leased Premises include, but are not limited to, the following:

- (a) The Leased Premises may not be used for any purpose inconsistent with that authorized by the Head Start Act and applicable regulations.

(b) Leased Premises may not be encumbered, used as collateral, sold or otherwise transferred by the Tenant to another party without the written permission of the responsible HHS/ACF official.

(c) The grant conditions and requirements cannot be altered or nullified through a transfer of ownership.

Further information regarding the Federal Interest in the Leasehold can be obtained from the HHS/ACF Regional Office of Grants Management, at the address provided in Section 5.

15. Binding on Heirs, Successors And Assigns.

This Rider shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of each Party but does not otherwise create, and shall not be construed as creating, any rights enforceable by any person not a party to this Rider.

16. Entire Agreement.

This Rider constitutes the entire agreement among the Parties regarding the Federal Interest in the Leasehold, and any other statement, promise, representation or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Rider shall not be enforceable.

17. Integration and Modification.

No modification, waiver, amendment, or discharge of this Rider shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change is sought. No provision of this Rider shall be modified or limited by course of conduct or usage of trade except by an executed written agreement. In the event of a conflict between this Rider and the Lease, the terms of this Rider shall govern.

18. Severability.

In the event that any of the agreements, terms, or provisions contained in this Rider shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining agreements, terms, and provisions contained herein shall not be in any way affected, prejudiced, or disturbed.

19. Knowing and Voluntary Agreement.

The Parties have entered into this Rider voluntarily and with a complete and thorough understanding of its terms, meaning, and effect. Each of the undersigned is signing the

Rider voluntarily and freely, without coercion, having had the opportunity to read and raise questions about its meaning prior to signing.

20. Counterparts.

This Rider may be executed in any number of counterparts and by different parties in separate counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

21. Due Authorization.

The persons executing this Rider on behalf of a Party represent and warrant to the other Party that he or she has been duly authorized by such Party to so execute this Rider.

IN WITNESS WHEREOF, the Parties have executed this Rider pursuant to authority duly given, as of the date first above written.

[Signature pages follow.]

LESSOR

By:

of
of

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for said _____, personally appeared _____, _____, of _____, _____, personally known to me on the basis of satisfactory evidence to the individual, whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Seal

Notary Public

My Commission Expires:

RECIPIENT

By:

of
of

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for said _____, personally appeared _____, _____, of _____, _____, personally known to me on the basis of satisfactory evidence to the individual, whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Seal

Notary Public

My Commission Expires:

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
ADMINISTRATION FOR CHILDREN AND FAMILIES

By:

Grants Management Officer

On this day of , , before me, the undersigned, a Notary Public in and for said , personally appeared , Grants Management Officer, of the United States Department of Health and Human Services, Administration for Children and Families, personally known to me on the basis of satisfactory evidence to the individual, whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Seal

Notary Public

My Commission Expires:

EXHIBIT A

LEGAL PROPERTY DESCRIPTION

EXHIBIT B

ATTACH LEASE